

**Monterey College of Law**  
**CONTRACTS**  
**Midterm Examination**  
**FALL 2024**  
**Professors R. Patterson & D.Kutter**

**General Instructions:**

Answer Two Essay Questions.

Answer 20 Multiple-Choice Questions in Exemplify

Total Time Allotted: Three (3) Hours

Recommended Allocation of Time: Equal Time per Question

Question 1

Claire is a partner in a law firm and is authorized to hire associates for the law firm. During negotiations with Danny, a student in his final year at law school, Claire told Danny that if hired, his annual salary would be \$120,000. She told Danny that any offer would be contingent on his graduating law school. Danny informed Claire that he was interested but was already considering an offer from another firm which had promised him a salary of \$130,000.

The next day, Danny received the following letter from Claire:

“Law Firm hereby offers you a job for one year. This offer is contingent upon your graduating from law school. The salary is to be \$140,000. I will hold this offer open for five (5) days. This is to be the full and final agreement between us and may not be added to or amended by prior agreements or discussions.”

Danny was thrilled by the handsome salary offered by Law Firm and immediately called the other firm and declined its \$130,000 offer. Later that day, however, Claire reread the letter and noticed that she mistakenly typed \$140,000 instead of the \$120,000 she had intended to offer. Claire called Danny at once, but there was no answer and no voicemail was setup. She then called the law school and left the following message for Danny with the school staff: “Problem with salary. Offer revoked, Claire.” The staff placed the message in Danny’s locker at school.

Danny mailed an acceptance to Claire the next day. He later discovered the message from Claire in his locker. He telephoned Claire who explained the error. Danny insisted that he had accepted the offer and that the law firm was bound by it.

Claire was upset by Danny’s position and told him that the law firm would not employ him at any salary. Danny subsequently graduated from law school.

1. Was a valid contract formed between Danny and Law Firm?
2. What was the salary that Law Firm will be responsible for if there was a valid contract formed?
3. What defenses might Law Firm raise and how should they be resolved?

\*\*\*\*

## Question 2

Arthur, a star athlete at UCLA, was receiving offers from professional basketball teams to leave school early and play professional basketball. He received a letter signed by the owner from the Golden State Warriors stating, "We may be able to use you when you finish college. If you'll stay in school for 2 more years until graduation, and not sign with or play for another pro team in the meantime, and give us the first chance to bid for your services upon your graduation, we will pay you \$300,000 when you graduate. You have my word."

Arthur, knowing that he would not be able to play basketball forever and wanting to have an education to fall back on, decided to stay in school and finish his biology degree. He promptly wrote the Golden State Warriors owner an email back saying "Thanks, I am staying at UCLA until graduation as you recommended. I'll be in touch when I graduate. Arthur."

The email was properly addressed, but was flagged as "spam," and the Warriors owner never received it.

During Arthur's senior year, he broke his right arm and could no longer play basketball as effectively as he used to. Shortly thereafter he received a letter from the Warriors owner expressing regret over the injury and stating that he was sorry he could not now use him or pay him anything. Upon graduation, Arthur offered his services to the Warriors and demanded \$300,000. When the Warriors owner refused, Arthur sued the Warriors for \$300,000.

Arthur consults you and wants to sue the Warriors for \$300,000. Analyze what contractual relationship, if any, Arthur has with the Warriors, and what advice you would give him on his potential lawsuit.

\*\*\*\*

# ANSWER OUTLINE-ESSAY

## CONTRACTS

FALL 2024

Profs. Patterson & Kutter

### Contracts Outline for Questions 1

1. Offer – intent, terms, communicated
2. Offer open – offer can be revoked at any time prior to acceptance unless irrevocable by DR; offer can be terminated by lapse of time but here it was open for 5 days; Danny's acceptance was 2 days later
  - a. Claire's attempted revocation was received after Danny had already sent the acceptance
3. Acceptance – mirror image rule; mailbox rule
4. Consideration – MBECLD (work for salary)
5. Defenses – unilateral mistake (no defense unless Danny knew and took advantage); parole evidence rule (analyze that written agreement had a merger clause so cannot add or contradict terms in the written agreement)

\*\*\*\*\*

### Contracts Outline for Question 2

1. Offer – intent, terms, communicated (unilateral contract accepted by performance)
2. Offer open – made irrevocable by partial performance (Arthur staying in school); attempted revocation was ineffective
3. Acceptance – Arthur stayed in school, graduated, and gave first chance to owner
4. Consideration – BEALD
5. SOF – here there was a writing with essential terms signed by party charged

Conclusion - Contract formed.

1)

In determining the rights of the parties, we must first determine if a valid enforceable contract exists. A valid enforceable contract consists of an offer, that is open for acceptance and is communicated to the offeree, was accepted, and is supported by adequate consideration. A contract may be a unilateral contract (promise for performance) or a bilateral contract (promise for a promise) and is either governed under Common Law, if the subject matter is for services, or under UCC, if the subject matter is for goods.

Here, the contract in question is a bilateral agreement between Clair (C), hiring partner of Law Firm (LF), and Danny (D), a third year law student for employment, thus we will evaluate the rights of the parties under Common Law. ✓

## **OFFER**

An offer is a promise to do or not do something. A valid offer (1) consists of words of promise indicating the intent to enter into an agreement, (2) has clear and definite terms, and (3) communicates the power of acceptance to the offeree or class of offerees. The intent of the parties to enter into a contract is objectively assessed by standing in the shoes of the other party. A valid offer requires all essential terms be stated, including the parties, subject matter (quantity and quality), price, and time for performance. If the contract includes essential terms regarding price or time for performance that are ambiguous, then the contract may be deemed indefinite. A court may gap fill certain essential terms (price/time for performance) based on fair market value or reasonable time based on industry practice. The offer must be communicated to the offeree conveying the power of acceptance to the offeree, and is made effective upon receipt by the party or a member of the class of party. ✓

Here, the written offer meets the essential terms required under CL for a services agreement including: parties (LF and D), time for performance (1-year), subject matter (employment), and price (salary of \$140,000 per year). The written offer further states that the offer will remain open for 5 days and includes a merger clause indicating that the offer is intended to be the full and final agreement between the parties and may not be added to or amended by prior agreements or discussions.

Therefore, the Offer meets all essential terms and requirements under Common Law and is valid, absent a defense. ✓

### **OFFER OPEN**

An offer is effective upon receipt by the other party and will remain open until termination or revocation. An offer may automatically terminates by expiration of time for acceptance (if defined in the offer), conditions met, adjudication of insanity of one of the parties, death of the offeror, or destruction of subject matter. An offer may be revoked by the offeror prior to acceptance by the offeree. However, if there is partial performance (beyond mere planning and preparations) then an offer is made irrevocable. ✓✓

Here, the written offer expressly states that the offer is open for five (5) days, thus conveying the power of acceptance to D.

The offer was valid and open for acceptance by D, absent any defenses. ✓

### **OFFER ACCEPTED**

Under a bilateral contract, unless otherwise stated in the offer, the means and timing for acceptance of an offer must be by reasonable method and within a reasonable timeframe. Per the mailbox rule, an acceptance is made effective upon dispatch. ✓

Per the Mirror image Rule, acceptance of a bilateral offer requires unequivocal assent to all terms outlined in the offer, otherwise the acceptance with new terms will be an offer to negotiate or a counteroffer and will terminate the original offer. ✓

Here, Danny received the offer the day after his interview. D agreed to all terms as outlined in the offer and sent C his acceptance letter the day after receipt of the written offer, well within the 5 day acceptance period. Therefore, barring any defense, D's acceptance is effective on dispatch and valid. ✓ Good.

### CONSIDERATION

Consideration under a bilateral contract is a mutually bargained for exchange of contemporaneous legal detriment. Legal detriment includes the promise to perform services under the contract, therefore a signature attesting to the terms of the contract are valid forms of legal detriment. Legal detriment also includes the promise to forebear--to do or not do something which you are legally allowed to do--and therefore qualifies as adequate consideration.

Here, Danny submitted his agreement to the terms of the offer and "immediately called the other firm and declined" a \$130,000 offer following his acceptance at LF. Therefore, Danny sufficiently provides two forms of legal detriment, and the LF provides detriment in the form of a salary commitment per the terms of the agreement.

Therefore, both parties have provided adequate consideration in the form of a promise for a promise under the terms of the employment agreement, absent a defense to formation. ✓ Good.

### §90-PROMISSORY ESTOPPEL

Promissory estoppel requires that a clear and definite promise is made, such that it is foreseeably and reasonably relied on by the other party. If the reliance is substantial and



results in detriment to one of the parties, then courts will enforce the contract in order to avoid injustice, even if consideration is absent.

Here, Danny will argue that a clear and definite promise was made by LF to pay him \$140,000 per year and that he foreseeably and reasonably relied on this material fact when rejecting an offer he held for \$130,000 made by another firm. However, LF may argue a defense to formation to avoid the agreement. ✓

### DEFENSES:

Parties may seek to avoid a contract after formation. Generally, the following defenses are available: unilateral mistake, bilateral mistake, subsequent illegality, lack of consent, lack of capacity, unconscionability, or the contract may be argued as a violation of writing requirements under Statute of Frauds. Under the statute of frauds, certain types of agreements must be committed to writing to be enforceable, including agreements in interest of marriage (prenuptial agreements), agreements for services that cannot be performed within a year from date of signing, agreements for sale or lease of land (except month to month agreements), suretyships and executorships.

Here the contract is in writing, despite the fact that it could be performed (if an unfortunate event occurs with D) and thus is not required to be in writing under the SoF.

A defense may be asserted arguing a unilateral mistake, which is generally enforceable unless the non-mistaken party knew or had reason to know of the mistake or unconscionability of the terms. ✓

Here, C will argue that the formation is not valid because the written offer for \$140,000 was made by mistake. ✓ During the interview, C made a verbal offer to Danny that included a salary of \$120,000, contingent on his graduation from law school. Danny expressed his interest but also stated that he was considering other offers with a salary of \$130,000. C



will assert that while this was a unilateral mistake of fact, Danny had reason to know of the mistake because they had verbally agreed to the terms of the offer during the interview. However, Danny will counter that he told C that he has an outstanding offer for \$130,000. When he received the offer for \$140,000 he reasonably believed that LF was being competitive and thus offering him a higher salary so as to secure his acceptance. Should a court be permitted to weigh the evidence and circumstances regarding the intent of the parties to agree prior to the written offer, a court would likely find D's argument to be compelling. ✓ *Good analysis*

The Parole Evidence Rule (PER) governs the admissibility of extrinsic evidence, e.g. oral or contemporaneous writings, to be referenced when a court interprets or enforces a written contract. PER states that extrinsic evidence that is prior to or contemporaneous to a written agreement is inadmissible if it contradicts, adds, or varies from the terms of a totally integrated agreement. A total integration occurs if a written contract is intended to be the final and complete expressed intent of the parties agreement.

To determine if an agreement is totally integrated, courts will evaluate the agreement to ascertain if it is sufficiently detailed, comprehensive, includes material provisions, and (primarily) if the agreement includes a merger clause. A merger clause generally states that the writing is the "final and complete agreement and may not be amended by prior agreements." *Good!!*

If the court determines that the agreement is a fully integrated agreement, then the written agreement supersedes any prior oral agreements and prior evidence may not be submitted.

If the court determines that the agreement is a partial integration, then PE is allowed to supplement (not contradict) the original agreement. However, extrinsic evidence may be introduced if there is a question as to whether or not the contract formation was invalid due to fraud, misrepresentation, duress, undue influence, or mistake--if the mistake is to show that the party to be enforced upon was tricked into signing because of fraudulent

statements. Prior evidence may also be submitted to clarify ambiguous terms, essential terms, and conditional promises.

Here, LF will argue to have the oral agreement by and between C and D during the interview submitted into evidence. LF may argue that the extrinsic evidence is permitted because there is a question as to the validity of the contract formation. LF will assert that the mistake of fact was substantively unconscionable and one-sided, that a salary of \$140,000 unfairly benefits/unjustifiably enriches D.

However, this argument will fail for three reasons. First, a reasonable person in the other party's shoes would likely see the salary offer as a reasonable amount intended to beat out the competition for a quality candidate therefore not unconscionable. Furthermore, the terms included in the written offer are sufficiently detailed and comprehensive. The terms include the unambiguous essential terms, including the salary, and comprehensive contingencies. Most importantly, the agreement includes the following merger clause: "This is to be the full and final agreement between us and may not be added to or amended by prior agreements or discussions." Therefore, a court would hold the written agreement to be a total integration and would bar extrinsic evidence to contradict any provisions therein.

LF may argue that Danny accepted the offer after C terminated the offer, thereby invalidating any formation. Per the mailbox rule, an offer is valid on receipt, while an acceptance is valid on dispatch. Clair dispatched her termination the day she sent the offer by calling the school and leaving a message, which Danny didn't receive until after he dispatched his acceptance. Therefore, Danny's dispatch supersedes LF's termination and does not invalidate formation.

In conclusion, there is a valid enforceable agreement between LF and Danny. A court would likely hold LF responsible for honoring the salary committed to under the

---

agreement of \$140,000. It was a unilateral mistake, the amount is reasonable and does not unjustly enrich D, and D had relied on this offer to his detriment.

2)

In determining the rights of the parties, we must first determine if a valid enforceable contract exists. A valid enforceable contract consists of an offer, that is open for acceptance and the power of acceptance is communicated to the offeree, was accepted, and is supported by adequate consideration.

### Offer

An offer is a promise to do or not do something. A valid offer consists of clear and definite terms, words of promise indicating an intent to enter into an agreement and the power of acceptance is communicated to the offerree or class of offerees. Intent of the parties to enter into a contract is objectively assessed by standing in the shoes of the other party. An offer may be for a unilateral contract (promise for performance) or a bilateral contract (promise for a promise). An offer for services is governed by Common Law and an offer for goods is governed by UCC requirements.

A valid offer requires all essential terms be stated, including the parties, subject matter (quantity and quality), price, and time for performance. If the contract includes essential terms regarding price or time for performance that are ambiguous, then the contract may be deemed indefinite. A court may gap fill those essential terms based on fair. market value or reasonable time for performance.

An offer must be communicated to the offeree to be effective and is made effective on receipt. Here, Arthur received the letter signed by the owner, thus the offer was adequately communicated to Arthur conveying to Arthur the power of acceptance.

Here, Golden State Warriors (**GSW**) made an offer to Arthur \$300,000 if he (1) stays in college two more years until graduation, (2) does not sign with or play for another pro team in the interim, and (3) gives GSW the right of first refusal (ROFR) to bid for Arthur's services as a player (the **Offer**). The Offer includes all essential terms: the parties

---



(GSW and Arthur), the subject matter (ROFR on Arthur's candidacy as a player post-graduation), the time for performance (until graduation), and the price (\$30,000). The owner of GSW further states "you have my word!" which are express words of promise.

✓ Therefore, the Offer meets all essential terms and requirements under Common Law and is valid, absent a defense.

### **OFFER OPEN**

An offer will remain open until termination or revocation. An offer may automatically terminate by: expiration of time for acceptance (if defined in the offer), conditions met, adjudication of insanity of one of the parties, death of the offeror, or destruction of subject matter. An offer may be revoked by the offeror prior to acceptance by the offeree. However, if there was partial performance (beyond mere planning and preparations) then an offer is made irrevocable.

✓ Shortly after receipt of the Offer, Arthur emailed an acceptance to GSW which was caught in GSW's spam filters. However, this is a unilateral contract, and therefore Arthur's email to GSW was a courtesy, not a requirement.

After Arthur broke his arm his senior year (at least one year after the offer was made), GSW (without knowledge of Arthur's email) attempted to revoke the offer, however by this time half of the performance under the contract had been completed by Arthur because per the contract, he remained in school for 1 of the two years and did not sign with or play for any other teams.

✓ Therefore, the Offer is irrevocable due to partial performance.

However, GSW will assert a defense of destruction of subject matter. The subject matter under the contract is the ROFR on Arthur's candidacy as a player post-graduation.

---

However, Arthur's candidacy was not destroyed with his broken arm. GSW is afforded the right to accept or reject Arthur's candidacy, regardless of his status as a player.

Therefore, the Offer was open for acceptance by Arthur until graduation, absent any defenses.

### **OFFER ACCEPTED**

Under a bilateral contract, if means of acceptance including timing and form of delivery are not stated in the offer, then a reasonable method and timeframe shall be inferred. However, a unilateral agreement can only be accepted by full performance of all the terms as stated in the offer.

Here, Arthur fully performed under the contract. He (1) stayed in school for the two years until graduation, (2) did not sign with or play for another pro team in the interim, and (3) gave GSW ROFR to bid for Arthur's services as a player.

The Offer was accepted, absent any defenses.

### **CONSIDERATION**

Consideration under a unilateral contract is a bargained for exchange for act of legal detriment. Legal detriment includes the promise to forbear--to do or not do something which you are legally allowed to do--and therefore qualifies as adequate consideration.

GSW will assert a defense against formation claiming that Arthur did not provide adequate consideration under the contract as he gave nothing of legal detriment. They may argue that GSW offered \$30,000 which is adequate consideration, but that Arthur did not supply consideration. They may argue that an education is a benefit, not a loss, and therefore should not be held as consideration. However, Arthur giving up his rights to leave school or engage another team would qualify as adequate legal detriment. Arthur



gave up (1) his right to leave school early, (2) his right to engage with other teams during the 2 year period, and (3) his right to offer his candidacy to another team before he offered it to GSW- all of which qualify as acts of legal detriment.

Barring any defenses, Arthur and GSW supported the contract with adequate consideration.

### **§90-PROMISSORY ESTOPPEL**

Promissory estoppel requires that a clear and definite promise is made, such that is foreseeably and reasonably relied on by the other party. If the reliance is substantial and results in detriment to one of the parties, then courts will enforce the contract in order to avoid injustice, even if consideration is absent.

Here, Arthur substantially relied on the promise made by GSW in the Offer. He had opportunities with other teams which he declined and could have pursued other avenues during the first year under the contract. Furthermore, more than 50% of the contract performance had been completed by the time GSW attempted to revoke the agreement. Arthur reasonably relied on the assurance made by the Owner of GSW, especially considering his express words "You have my word!"

Therefore, absent defenses, a court will find that Arthur reasonably and justifiably relied on the Offer.

### **DEFENSES:**

Parties may seek to avoid a contract after formation. Generally, the following defenses are available: unilateral mistake, bilateral mistake, subsequent illegality, lack of consent, lack of capacity, unconscionability, or the contract may be argued as a violation of writing requirements under Statute of Frauds.

---

Here, GSW may assert the defenses listed u, including that the offer was never accepted, the contract termed when the subject matter of the contract was destroyed, or that there wasn't adequate consideration in support. However, for the reasons stated above, these arguments would fail. A court will find that Arthur performed more than 50% of the contract by the time GSW attempted to revoke the offer. They will further hold that Arthur completed full performance under the terms under the contract at time of graduation and fulfilled his obligation not to engage other teams and offer GSW ROFR. Therefore, per the terms agreed upon, GSW will pay Arthur \$300,000 and they may exercise their right of first refusal to accept or reject Arthur's candidacy as a future GSW player.

**END OF EXAM**